

Cellexis' introduction of prepaid cellular service in the Baltimore/Washington areas. BANM itself executed the Wholesale Service Agreements in November 1995. It did so fully aware of the Cellexis' system requirements and the feasibility of Cellexis' interconnection needs.

14. Almost immediately after BANM executed the Washington-Baltimore Agreements, it sought to significantly alter their terms. BANM attempted to limit the scope of the Agreements to a 90 day "trial period" through an addendum. While Cellexis was more than willing to work with BANM to accommodate any reasonable internal requirements stemming from the Bell Atlantic/NYNEX merger of cellular operations, it was not willing to agree to eviscerate the contracts it had just negotiated at BANM's suggestion. When Cellexis refused to capitulate, BANM advised Cellexis that it was terminating Cellexis' right to use its System in the Washington/Baltimore area. Cellexis promptly brought suit in the U.S. District Court for the District of Columbia.

15. In an effort to end this dispute, On February 20, 1996 Cellexis entered into a Memorandum of Understanding with BANM. Pursuant to this Memorandum of Understanding, Cellexis, on May 20, 1996, further entered into a Service Trial Agreement (the "Agreement") with BANM which specifically permits Cellexis to interconnect its switch with the BANM network through a T-1 line in order to provide prepaid cellular service to its customers in the Washington, D.C. and Baltimore,

Maryland metropolitan areas.¹⁷ Cellexis has thus been interconnected to BANM's network, with no adverse economic or technical impact on BANM, for almost a year.

16. On October 11, 1996, Defendant notified Cellexis that it intended to terminate the Trial Agreement on February 19, 1997, the earliest date possible under the Agreement.¹⁸ Defendant has offered no explanation for its decision, and has to date refused Cellexis' efforts to open discussions. On December 16, 1996, Defendant responded to Cellexis' most recent letter of December 5, 1996 requesting an extension of the existing interconnection arrangement. In its response, Defendant reiterated its intent to disconnect Cellexis and asserted that this disconnection did not violate the Communications Act or Commission policy.

17. Cellexis' efforts to make other interconnection arrangements have been equally unsuccessful. For example, Cellexis has recently filed a complaint against Southwestern Bell Mobile Systems for denial of interconnection.¹⁹ Efforts to negotiate an agreement with Sprint Spectrum have similarly failed. Thus, BANM's network is the only one available to Cellexis at this time in the Washington-Baltimore area.

18. Defendant continues to offer its "Mobile Direct" product, through which businesses interconnect PBXs with BANM's network in a manner (*i.e.*, through a "fixed

¹⁷ See Service Trial Agreement (Exhibit 1).

¹⁸ See Letter to Douglas Fougnyes and J. Douglas Dunipace, Esq. from Katherine S. Abrams (Oct. 11, 1996) (Exhibit 2).

¹⁹ See Cellexis International, Inc. v. Southwestern Bell Mobile Systems, Inc., Informal Complaint No. WB/ENF 961148 (Aug. 12, 1996).

use T-1 line") that is virtually identical to the Cellexis System.^{10/} Exhibit 5 is a BANM Mobile Direct marketing brochure that illustrates this BANM program.

19. In the Fall of 1996, Bell Atlantic NYNEX Mobile began offering its own prepaid cellular service plan by allowing its distribution arms in Washington, D.C. (Washington D.C. SMSA Limited Partnership) and Baltimore (Cellco Partnership) to interconnect to the BANM network. BANM's Mobile Minutes program charges \$1.00 a minute (Exhibit 6), more than double Cellexis' rate of \$0.49 per minute (\$0.39 per minute off-peak) (Exhibit 7).

V. DEFENDANT HAS VIOLATED SECTIONS 202 (b), 251(a), 202(b) and 332(c)(1)(B) OF THE COMMUNICATIONS ACT

20. BANM's unjustified decision to cut-off Cellexis' interconnection request violates four key provisions of the Communications Act. **First**, BANM's decision violates Section 202(a) of the Communications Act, which expressly prohibits discriminatory actions. **Second**, BANM's decision violates Section 251(a)'s express interconnection requirement, which applies broadly to all telecommunications carriers, including CMRS providers. **Third**, BANM's decision is also unjust and unreasonable in violation of Section 201(b). **Fourth**, BANM's decision violates Section 332(c)(1)(B)'s requirement to consider all reasonable interconnection requests. As the following

^{10/} Compare Exhibit 3, which illustrate a typical PBX interconnection and Exhibit 4, which illustrates Cellexis' interconnection.

discussion demonstrates, these statutory provisions preclude BANM from refusing to maintain Cellexis' reasonable interconnection arrangement.

A. BANM's Refusal to Continue Cellexis' Interconnection is Discriminatory

21. BANM's refusal to allow Cellexis to interconnect to provide prepaid services is unlawful discrimination both because BANM itself interconnects equipment to its system to provide prepaid services, and because BANM allows other third parties to interconnect to the mobile telephone switching office ("MTSO").

22. Section 202(a) of the Communications Act states:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.^{11/}

This provision protects all classes of persons against all types of discriminatory behavior. As discussed immediately below, BANM's decision to disconnect Cellexis discriminates against a class that the Commission has been particularly vigilant in protecting: resellers.

23. BANM's decision to cut-off Cellexis' access from its system discriminates against Cellexis as a reseller. The Commission, in removing AT&T's restrictions on the

^{11/} 47 U.S.C. § 202(a).

resale of public switched lines stated: "discrimination against a communications customer -- in this case, by the carrier's refusal to provide service to a reseller -- is unlawful if it is based only upon the fact that the customer is not the ultimate user of the service,"^{12/} i.e., because the customer is a reseller. In the cellular context, the Commission has already translated this prohibition on discrimination into an affirmative obligation. Specifically, the Commission's cellular resale policy requires cellular providers (and particularly BOC-affiliated providers) to: "provide system capacity to non-affiliated retailers or resellers on a non-discriminatory basis and **on the same terms and conditions as its own distribution arm.**"^{13/} The Commission has further clarified that "terms and conditions" means that all licensees must be willing to provide "substantially similar service to similarly-situated customers."^{14/}

24. BANM's decision violates this non-discriminatory service requirement in two respects. First, Bell Atlantic NYNEX Mobile, through its "distribution arms" in Washington, D.C. (Washington D.C. SMSA Limited Partnership) and Baltimore, Maryland (Cellico Partnership), has recently begun distributing its own prepaid cellular

^{12/} In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 83 F.C.C. 2d 167, 173 (1980) ("Resale and Shared Use").

^{13/} In the Matter of Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications System, 86 F.C.C. 2d 469, 511 (1981) ("Cellular Resale Decision") (emphasis supplied). See also Cellnet Communications v. Detroit SMSA, 9 FCC Rcd 3341, 3344 (1994) ("The Commission's cellular resale requirement . . . applies to the defendant regardless of its current organizational structure.").

^{14/} Cellnet Communications v. Detroit SMSA, 9 FCC Rcd at 3344.

program. BANM describes this new Mobile Minutes program as "The Prepaid Cellular Calling Service that allows you to pay as you go."^{15/} BANM's ad reveals its discriminatory purpose: to exclude Cellexis as a prepaid cellular service. Indeed, BANM will have to eliminate competition from Cellexis at \$.49 per minute during peak times, \$.39 per minute off-peak, in order to charge \$1.00 per minute for its own service.

25. Of course, the Commission's resale policy is designed to protect consumers by providing for just this kind of vigorous competitive check. BANM must "provide system capacity to non-affiliated retailers or resellers [, such as Cellexis,] on a non-discriminatory basis and on the same terms and conditions as its own distribution arm." Here the "same terms and conditions" include interconnection of a switch to permit provision of prepaid service.^{16/} Thus, if BANM offers a prepaid cellular program in the Washington-Baltimore area by allowing its own distribution arms to interconnect a switch to the networks, then it must allow Cellexis to do the same.

26. **Second**, BANM provides similarly-situated customers with the same type of switch interconnection over a T-1 line that Cellexis seeks. For example, BANM's Mobile Direct program permits private businesses to interconnect with BANM's network in a manner that is virtually identical to Cellexis' request. As BANM's own marketing brochure states, Mobile Direct routes calls "over a dedicated circuit [the] company provides between the local Bell Atlantic Mobile Switching Center [and the] company's

^{15/} See BANM's Mobile Minutes brochure at Exhibit 6.

^{16/} Cellular Resale Decision, 86 F.C.C. 2d at 511.

PBX or Centrex."^{17/} More specifically, as the diagram in Exhibit 3 demonstrate, BANM allows businesses to connect their PBX switches with BANM's network, through T-1 cables, at a point between the MTSO and the local telephone company's central office ("CO"). An incoming call is routed through the MTSO (if a cellular phone is used) or the CO (if a wireline phone is used) to the customer's PBX or Centrex switch. The BANM customer's PBX or Centrex switches the call and sends it forward. In the case of a call-forwarding function, the call would be sent out again, either through the MTSO or the CO, to the designated number.

27. The Cellexis switch is also interconnected with BANM's network, through a T-1 cable, at a point between the MTSO and the CO, as shown in Exhibit 4. Calls are processed in precisely the same way. Incoming calls reach Cellexis' switch via either the MTSO or the CO. The switch then verifies that there is sufficient funds in the account to pay for the call and then sends it forward, again either through the MTSO or the CO, to the dialed number. Thus, the Cellexis switch is interconnected in precisely the same way as the private PBX switches.

28. The only distinction between the Cellexis switch and BANM's Mobile Direct interconnections is that Cellexis is BANM's most threatening competitor in the

^{17/} Exhibit 5 at 4. A "PBX" is a private branch exchange, which is defined as "[a] private switching system serving an organization, business, company, or agency, and usually located on a customer's premises." The Information Age Dictionary, 226 (1992). A "Centrex" is "[a] service for business customers that shifts to a central-office switching system the functions usually associated with a private branch exchange (PBX) on a customer's premises." Id. at 45.

Washington-Baltimore prepaid cellular market. Not surprisingly, BANM wants to promote its \$1.00 per minute service by cutting off Cellexis' interconnection, which provides competition at less than half the price. Such an anti-competitive motivation is an invalid basis for discrimination and is utterly at odds with Commission policy and goals.

B. BANM's Decision to Cut-Off Cellexis Interconnection Violates Section 251(a)'s Express Interconnection Requirement

29. BANM's decision to cut-off Cellexis violates Section 251(a)'s express interconnection requirement. Congress, in the Telecommunications Act of 1996, added Section 251(a), which states that "[e]ach telecommunications carrier has the **duty to interconnect directly or indirectly with the facilities and equipment** of other telecommunications carriers . . . "^{18/}

30. The Commission's Interconnection Order, confirms that "all CMRS providers are telecommunications carriers and are thus obligated to comply with section 251(a)."^{19/} As the Commission has already concluded, Section 251(a) imposes a mandatory and unqualified interconnection requirement on all CMRS providers. Indeed, "even for telecommunications carriers with no market power, **the duty to**

^{18/} 47 U.S.C. § 251(a) (emphasis supplied).

^{19/} In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98 at ¶ 993 (rel. Aug. 8, 1996) ("Interconnection Order").

interconnect directly or indirectly is central to the 1996 Act and achieves important policy objectives."^{20/}

31. The obligations of Section 251(a) could not be more clear. All CMRS providers must interconnect with the facilities and equipment of others who provide telecommunications services. BANM and Cellexis, as providers of cellular service, are CMRS providers.^{21/} BANM therefore must permit other CMRS providers, such as Cellexis, to interconnect their equipment with the BANM network.

32. Congress enacted Section 251(a) well after the Commission's rulemaking on cellular resale and interconnection discussed in the next section.^{22/} Regardless of the Commission's tentative position in that proceeding, there can be no doubt that this new statutory provision requires defendant to permit Cellexis to interconnect its equipment to the BANM network.

^{20/} Id. at ¶ 997 (emphasis supplied).

^{21/} "CMRS" is "any mobile service. . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." Section 332(d)(1).

^{22/} In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rulemaking, 10 FCC Rcd. 10666 (1995).

C. BANM's Refusal to Continue Cellexis' Interconnection is Unjust and Unreasonable

33. In addition to being unlawful under Sections 202(a) and 251(a), BANM's refusal to continue Cellexis' interconnection is unjust and unreasonable in violation of Section 201(b). Section 201(b) of the Communications Act states:

All charges, practices, classifications, and regulations for and in connection with such communications service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful . . .^{23/}

In interpreting this section, the Commission continues to adhere to the statutory-based standard first enunciated by the D.C. Circuit in Hush-A-Phone: a carrier cannot establish a restriction which amounts to "an unwarranted interference with the telephone subscriber's right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental."^{24/} This standard has been used not only to protect a telephone subscriber's rights, but also competitors' rights.

34. As the Commission has stated: "Our past decisions introducing competition into other telecommunications markets have rested on this test."^{25/} Accordingly, the Commission has used the Hush-A-Phone principle not only to remove AT&T restrictions against interconnection of customer-supplied terminal equipment and

^{23/} 47 U.S.C. § 201(b).

^{24/} Hush-A-Phone Corp. v. U.S., 238 F.2d 266, 269 (D.C. Cir. 1956) ("Hush-A-Phone").

^{25/} Resale and Shared Use, 83 F.C.C. 2d at 171.

private communications systems,^{26/} but also to prohibit restrictions (and thus promote competition) on the resale of private lines, public switched lines, and, significantly, the sale of cellular services.^{27/} In the latter case, the Commission determined that mandatory resale was an important step in the "evolution of truly competitive markets."^{28/}

35. One of the more recent Commission decision's interpreting the Hush-A-Phone standard is Public Utility Commission of Texas v. ARCO.^{29/} In this decision, the Commission explained that the entity seeking to establish a restriction must factually demonstrate the perceived public detriment. Such a detriment is either

^{26/} Carterfone v. AT&T, 13 FCC 2d 420 (1968), recon. denied, 14 FCC 2d 605 (1968), recon. 18 FCC 2d 871 (1969); American Telephone and Telegraph Company Interconnections with Private Interstate Communications Systems, 71 F.C.C. 2d 1 (1979); In the Matter of American Telephone and Telegraph Company Restrictions on Interconnection of Private Line Services, 60 F.C.C. 2d 939 (1979); Heritage Village Church and Missionary Fellowship, Inc., 85 F.C.C. 2d 787 (1981), 88 F.C.C. 2d 1436 (1982), aff'd sub nom. Fort Mill Telephone Co. v. FCC, 719 F.2d 89 (4th Cir. 1983).

^{27/} Resale and Shared Use, 83 F.C.C. 2d at 171; In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C. 2d 261 (1976); Cellular Resale Decision, 86 F.C.C. 2d at 511 (The Commission's decision was, by reference to its Resale and Shared Use decisions, based in part on Hush-A-Phone). See also In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, 9 FCC Rcd 5408, 5466 (1994) (recognizing the applicability of Hush-A-Phone to cellular services).

^{28/} Cellular Resale Decision, 86 F.C.C. 2d at 511.

^{29/} Public Utility Commission of Texas v. ARCO, 3 FCC Rcd 3089 (1988), aff'd, 886 F.2d 1325 (1989).

"technical harm to the telephone system or economic impact which adversely affects the ability of a carrier adequately to serve the public, or both."^{30/}

36. BANM's decision to disconnect Cellexis cannot meet the Hush-A-Phone standard, for the Cellexis system inflicts no harm -- either technical or economic -- on BANM. That Cellexis' requested interconnection will have no technical impact on BANM is obvious from the fact that Cellexis has been successfully interconnected to the BANM system, with no adverse effects, for almost a year. Similarly, the requested interconnection does not have any negative economic impact on BANM, other than providing competition to its brand new prepaid service. BANM therefore cannot possibly substantiate a claim that Cellexis' request will adversely affect its ability to serve the public.

37. BANM also cannot point to the Commission's suggestion in its ongoing rulemaking not to require switched-based resale to support the reasonableness of its position for two reasons. **First**, Congress subsequently enacted Section 251(a), imposing a mandatory and unqualified interconnection obligation on Defendant.

38. **Second**, BANM's decision is completely antithetical to the goals and policies expressed by the Commission in this rulemaking. More specifically, the Commission's tentative suggestion not to mandate switched-based resale is predicated on a competitive, rapidly evolving market where reasonable requests are regularly

^{30/} Arco, 3 FCC Rcd at 3091.

granted without Commission intervention, thus obviating the need to impose a broad interconnection requirement:

Given the number of competitors we expect to be present in this market in the near future, competitive forces should provide a significant check on inefficient or anti-competitive behavior. This fact suggests that a regulatory mandate to allow switch-based resale may be unnecessary.^{31/}

The Commission also noted the uncertainties and costs of requiring CMRS providers to unbundle their services to meet the demands of switched-based resellers, and the administrative complexities of an across-the-board requirement.^{32/} At the same time, however, the Commission recognized that these circumstances would not always be present, when it stated: "We note that our tentative conclusions regarding a **general** reseller switch interconnection requirements should not be viewed as prejudging any **specific** complaints filed with respect to this issue."^{33/}

39. This is just such a specific complaint, as all of the circumstances cited by the Commission in support of its decision are clearly inapposite here. In particular, Cellexis is faced with a highly *uncompetitive* environment: BANM's system is the only one available to Cellexis in the Washington-Baltimore area at this time: efforts to make other arrangements have met similar roadblocks. For example, Cellexis has recently

^{31/} Second NPRM at ¶ 96. See also ¶ 43: "We reiterate that the Commission stands ready to intercede in the event a CMRS provider refuses a reasonable request to interconnect."

^{32/} Second NPRM at ¶ 96.

^{33/} Second NPRM at ¶ 97 (emphasis supplied).

filed a complaint against Southwestern Bell Mobile Systems for denial of interconnection over a T-1 line.^{34/} Efforts to negotiate an agreement with Sprint Spectrum have similarly failed.

40. Further, BANM is not faced with excessive unbundling costs. Given that Cellexis is already connected to the BANM network, BANM will not be faced with any new costs. Moreover, since any costs already incurred were done so in the context of a freely negotiated agreement, they can hardly be characterized as excessive. Finally, Cellexis is not asking the Commission to undertake the administrative burdens associated with imposing a general obligation. Rather, it is merely asking the Commission to do what Congress and its own policies demand: prevent the abuse of market power by a BOC-affiliated CMRS provider to stifle competition and limit consumer choice by cutting off an existing service.

41. While Cellexis is not requesting that the Commission impose a general requirement, it observes that the benefits of such a requirement may ultimately outweigh the costs. Indeed, as noted above, the competitive environment for switched based resale is no different from non-switched based resale, for which the Commission did decide to impose a mandatory requirement on cellular and other CMRS providers. In imposing this mandatory resale requirement, the Commission itself observed:

Because cellular, broadband PCS and covered SMR services are not yet provided on a fully competitive basis, we conclude that carriers in these services should, for an

^{34/} See Cellexis International, Inc. v. Southwestern Bell Mobile Systems, Inc., Informal Complaint No. WB/ENF 961148 (Aug. 12, 1996).

interim period, be specifically prohibited from restricting resale or unreasonably discriminating against resellers. Accordingly, we condition existing and future cellular, broadband PCS and covered SMR licenses upon compliance with our resale rule . . . ^{35/}

The Commission has determined that a mandatory resale requirement is necessary because the cellular service is not yet competitive. This lack of competitiveness affects all resellers, including those that are switched-based. Accordingly, the Commission should at a minimum aggressively enforce a duty not to cut off switched-based resellers where there is not a sufficient number of suppliers to ensure that switch-based reselling opportunities are available.

D. SECTION 332(c)(1)(B) REQUIRES BANM TO ENTERTAIN ALL REASONABLE INTERCONNECTION REQUESTS

42. Section 332(c)(1)(B) of the Communications Act require BANM to entertain all reasonable requests for interconnection. Section 332(c)(1)(B) states:

Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act.^{36/}

This provision establishes the principle that all existing CMRS providers are entitled to establish reasonable physical interconnections with any common carrier, including

^{35/} In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services First Report and Order, CC Docket No. 94-54 at ¶ 7 (rel. June 12, 1996).

^{36/} 47 U.S.C. § 332(c)(1)(B).

another CMRS provider.^{37/} BANM's decision to disconnect Cellexis without any explanation or opportunity for discussion is directly contrary to these provisions.

43. Section 332(c)(1)(B) does provide CMRS providers with some discretion. In particular, carriers are only required to comply with "reasonable" interconnection requests. Carriers do not have the discretion, however, to refuse any and all requests for interconnection absent a specific Commission order. Such an interpretation of § 332(c)(1)(B) would not only place an unnecessary and unacceptable burden on Commission resources, but it would directly conflict with Congressional intent. As Congressmen Markey and Fields stated in a letter to Chairman Reed Hundt: "we urge the Commission to aggressively **enforce** the provisions in Section 201 and Section 332(c)(1)(B) **requiring** carriers to provide interconnection to providers of commercial mobile services. . ."^{38/} Thus, Congress clearly contemplated a regime where the Commission's role is to compel carriers to carry out their statutory interconnection obligation where necessary, not to decide each and every request on an *ad hoc* basis.

44. In short, Section 332(c)(1)(B) gives BANM the right to refuse unreasonable interconnection requests. It does not, however, give BANM the right

^{37/} 47 U.S.C. § 332(c)(1)(A).

^{38/} E. Markey and J. Fields, Letter to Chairman Reed Hundt, GN Docket 93-252 (Jan. 28, 1994) (emphasis supplied). See also H.R. Rep. 103-111, 103rd Cong., 1st Sess., pt. 3 (May 25, 1993) (stating that the House Committee "considers the right to interconnection an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.").

either to outright refuse reasonable requests, or to summarily rescind existing interconnection arrangements.

45. The Commission's tentative suggestion in its ongoing NPRM not to impose a switched resale requirement does nothing to change BANM's Section 332(c)(1)(B) obligation to permit Cellexis to interconnect with its network. As discussed above, Congress subsequently enacted Section 251(a), imposing a mandatory and unqualified interconnection obligation on Defendant. Moreover, the Commission's own earlier conclusion presupposes a competitive environment which does not require Commission to act in order to ensure carriers comply with their statutory obligations.^{39/} Thus, just as this conclusion does not abrogate the requirements of Section 201(b), neither does it eviscerate those of 332(c)(1)(B).

VI. RELIEF REQUESTED

46. Based on the foregoing, Cellexis respectfully requests that the Commission issue an order finding that BANM's decision to terminate Cellexis' interconnection with BANM's network:

- discriminates against Cellexis in violation of Section 202(a) of the Communications Act;
- denies interconnection of Cellexis' equipment in violation of Section 251(a) of the Communications Act;

^{39/} Second NPRM at ¶ 96. See also ¶ 43: "We reiterate that the Commission stands ready to intercede in the event a CMRS provider refuses a reasonable request to interconnect."

- unreasonably denies service to Cellexis in violation of Section 201(b) of the Communications Act;
- unreasonably and discriminatorily restricts the switched resale of cellular service in violation of the Commission's policy regarding the resale of cellular communications service; and
- impermissibly denies service to Cellexis in violation of Section 332(c)(1)(B) of the Communications Act.

47. Cellexis also respectfully requests that the Commission, pursuant to its authority under Sections 2(a), 202, 309(a), 314 and 332(c)(1)(B) of the Communications Act, require BANM to maintain Cellexis' current interconnection arrangement.

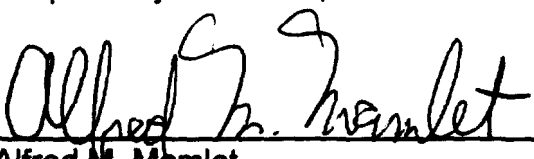
48. Finally, Cellexis reserves its right under Sections 206 and 209 of the Act to, by amendment or motion, seek specific damages that Cellexis will incur should Defendant unlawfully terminate Cellexis' interconnection.

Respectfully submitted,

Cellexis International, Inc.

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Dated: December 20, 1996

CERTIFICATE OF SERVICE

I, Colleen Sechrest, hereby certify that copies of the foregoing were served by hand delivery, unless otherwise noted, this 29th day of April, 1996, on the following persons:

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EXHIBIT 1

SERVICE TRIAL AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of May, 1996, by and between Cellexis International, Inc. an Arizona corporation, ("Cellexis") and Washington D.C. SMSA Limited Partnership, a Virginia Limited Partnership, and Celco Partnership, a Delaware General Partnership, each doing business as Bell Atlantic NYNEX Mobile (collectively "BANM") with offices at 180 Washington Valley Rd., Bedminster, NJ 07821. Each of Cellexis and BANM may be referred to as a "Party" and collectively as the "Parties".

WHEREAS, BANM is either licensed and authorized by the Federal Communications Commission ("FCC") to provide cellular telecommunications service or manages cellular telecommunications services on behalf of the FCC licensee in various markets, including Washington, D.C., and Baltimore, Maryland; and

WHEREAS, Cellexis provides cellular customers, such as the customers that use BANM's cellular network, with a prepaid method of billing, and rating for such customers cellular calls as more fully described below; and

WHEREAS, Cellexis wishes to offer a service as more fully described below, which currently requires a unique network offering of BANM's cellular network; and

WHEREAS, BANM wishes to conduct a trial to evaluate a possible BANM network offering and to evaluate the marketing of such network offering to Cellexis and to other entities who might wish to offer a similar service and to determine whether BANM has any further interest in making such an offering available in the Washington D.C./Baltimore market or elsewhere; and

WHEREAS, Cellexis wishes to provide its prepaid billing service for cellular customers utilizing the network offering which is the subject of this Trial in accordance with the terms and conditions set forth herein; and

WHEREAS, Cellexis and certain affiliates of BANM entered into a Memorandum of Understanding on February 20, 1996 which set forth some of the agreed upon terms of this Trial Agreement and contemplated that the Parties would agree to additional terms governing the Trial; and

WHEREAS, the Parties have entered into a Settlement Agreement of even date which is attached hereto and made a part hereof ("Settlement Agreement").

NOW, THEREFORE, in consideration of the premises, mutual covenants, and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DESCRIPTION OF THE SERVICE

The Cellexis system is comprised of Cellexis's real-time billing platform, which Cellexis represents is proprietary, at Cellexis's location in Washington, D.C. (the "System"). Cellexis customers in the Market who purchase a Cellexis prepay billing option enabling them to access and use BANM's cellular network for their calls shall be known as ("Authorized Users"). Cellexis's System provides such Authorized Users the opportunity to obtain a prepaid billing option for airtime, and other charges associated with local, long distance and international cellular calls (the "Service").

2. SCOPE OF TRIAL

Cellexis shall have the opportunity to provide the Service in BANM's Washington/Baltimore cellular geographic service area (FCC Market Numbers 8 and 14, the "Market") and BANM shall have the opportunity to conduct a network and marketing trial during which BANM shall analyze the network configuration and the marketing viability of its network offering ("Trial"). The Trial commenced on or about February 20, 1996 and shall end on or about February 19, 1997. The Parties agree and understand that this Trial Agreement is solely for the Market and that BANM does not hereby agree to implement any interface or other network configuration or specifications in any other cellular market. Regardless of the outcome of the Trial, BANM has no obligation to offer any interface or network configuration used during the Trial, or to continue this, or any other interface, network configuration or any other network offering in the Market, or in any other cellular market. Participants in the Trial shall include Users") Cellexis and BANM.

3. FEES

(a) During the Trial, Cellexis shall pay BANM all charges for service elements at the rates set forth on Exhibit A, which shall include, but not be limited to, access, activation, airtime, port charges, and features.

(b) Cellexis must order a minimum of one hundred (100) BANM cellular mobile phone numbers for use during the Trial. After the initial order, Cellexis must order BANM cellular phone numbers in increments of one hundred (100) numbers which shall be transferred into Cellexis's account. BANM shall provide Cellexis additional blocks of one hundred (100) numbers provided that previous numbers provided to Cellexis are eighty-five (85%) percent utilized. Access charges and activation charges shall be incurred for numbers beginning on the day that such numbers are activated in BANM's cellular network.

4. PAYMENT

Cellexis shall pay all BANM invoices in full within thirty (30) days of the date of invoice. No deductions are allowed without BANM's prior written approval. Cellexis shall pay a late payment fee of one and one-half (1-1/2%) percent per month on all amounts past thirty (30) days. Cellexis shall be responsible for all charges associated with access numbers assigned to Cellexis including any calls that may bypass the Cellexis System and including any roaming calls that may occur. If Cellexis identifies any discrepancy in an invoice, based upon Cellexis's records, Cellexis shall provide BANM with written notice and a copy of the Cellexis records that are the basis for Cellexis claim of discrepancy within ten (10) business days after the later of (i) receipt of the invoice containing the discrepancy or (ii) receipt of the magnetic billing tape of call detail applicable to such invoice. BANM shall investigate and respond to such notice within thirty (30) days of BANM's receipt of Cellexis written records. After investigation of Cellexis's claimed discrepancy, if Cellexis is entitled to an adjustment, BANM shall apply a credit in that amount on the invoice issued after resolution of the investigation. If the Trial has ended before BANM completes its investigation and if there are no outstanding invoices and if that investigation results in an adjustment owed to Cellexis, BANM shall refund the adjustment amount.

5. INSTALLATION, TESTING AND EVALUATION.

(a) The Parties shall perform testing to ensure the Facilities are properly installed, operational and that the System is properly functioning with the BANM cellular network. BANM may also evaluate the System's interoperability with the BANM cellular network and may make such changes, in BANM's discretion, to its network or to the interconnectivity between BANM's network and the System, and conduct such testing as it deems appropriate and/or necessary to evaluate the System, at its discretion, during the same time period.

(b) BANM, at its discretion, to be exercised in good faith, may make alterations to its network requirements, or to its interface, or to its connectivity, or interoperability requirements between Cellexis equipment and BANM's network for provision of BANM's cellular radio service.

(c) In the event that any alterations made by BANM during the Trial, impact the operation of the Trial or the System, Cellexis, at its sole cost, and subject to the provisions of Section 7(a) and 7(b), shall make any changes to its System, including but not limited to, any changes to Authorized User cellular telephones or Authorized User telephone numbers, that may be required by BANM network changes made during the term of the Trial.

6. CELLEXIS OBLIGATIONS.

(a) During the Trial, Cellexis shall be responsible, at its sole expense, for the costs associated with the acquisition and maintenance of the T-1 lines between BANM's Mobile Telephone Switching Offices ("MTSOs") in the Market ("Facilities") and the Cellexis System. Cellexis shall pay BANM port charges as set forth on Exhibit A for each T-1 line.

(b) During the Trial, Cellexis shall be responsible, at its sole expense, for establishing and maintaining all other telecommunications facilities and equipment necessary to provide the Service in accordance with the BANM requirements, as may be modified from time to time during the Trial.

(c) The System shall be used solely for the purpose of providing the prepaid billing option which is the subject of this Trial.

(d) Cellexis shall provide system support, monitoring and maintenance of the System and the Facilities. Cellexis shall provide BANM with immediate notice of any issue coming to its knowledge affecting BANM's cellular system, regardless of whether Cellexis detects the problem or BANM provides notice to Cellexis of a suspected problem. Cellexis shall respond to any such issue as it relates to the Cellexis System or Facilities within four (4) hours of detection or receipt of notice from BANM. If BANM determines that the issue requires remedial action by Cellexis, Cellexis shall diligently commence remedial efforts to resolve the issue within twenty four (24) hours.

(e) For the duration of the Trial, Cellexis shall provide BANM with all information concerning the signaling interface between the BANM network and the Cellexis System that BANM may require.

(f) Subject to BANM's compliance with Section 7(d), Cellexis shall maintain adequate System capacity and Facilities to handle the traffic volume generated by Authorized Users during the Trial.

(g) Cellexis shall supply BANM with quarterly unaudited financial statements within forty-five (45) days after each quarter ends and audited financial statements within sixty (60) days after year end.

7. BANM OBLIGATIONS.

(a) BANM has no obligation to provide any particular network offering to Cellexis for purposes of the Trial, or otherwise, provided that BANM shall provide thirty (30) days prior written notice to Cellexis of any network changes that impact the operation of the System and Cellexis shall make any necessary changes to the System or to Authorized User cellular telephones or Authorized User telephone numbers required by the BANM changes.